

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0626-PWS-E TCEQ ID: RN101265866 CASE NO.: 35731
RESPONDENT NAME: City of Sulphur Springs

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Sulphur Springs, located at 825 Hillcrest Drive on State Highway 19, Sulphur Springs, Hopkins County</p> <p>TYPE OF OPERATION: Public water supply</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 14, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Christopher Keffer, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-5610; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable Freddie Taylor, Mayor, City of Sulphur Springs, 125 South Davis Street, Sulphur Springs, Texas 75482 Mr. Marc Maxwell, City Manager, City of Sulphur Springs, 125 South Davis Street, Sulphur Springs, Texas 75482 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Record Review Relating to this Case: March 16, 2008</p> <p>Date of NOE Relating to this Case: March 18, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter for total trihalomethanes ("TTHM") based on a running annual average [30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p>	<p>Total Assessed: \$675</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$675</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Within 365 days after the effective date of this Agreed Order, return to compliance with the running annual average MCL for TTHM; and</p> <p>b) Within 385 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. a.</p>

Additional ID No(s): PWS No. 1120002



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision March 8, 2008

TCEQ

DATES	Assigned	7-Apr-2008	Screening	15-Apr-2008	EPA Due	30-Nov-2008
	PCW	15-Apr-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Sulphur Springs		
Reg. Ent. Ref. No.	RN101265866		
Facility/Site Region	5-Tyler	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	35731	No. of Violations	1
Docket No.	2008-0626-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Enf. Coordinator	Christopher Keffer
Multi-Media		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 10% Enhancement Subtotals 2, 3, & 7 **\$50**

Notes

The penalty is enhanced due to two NOV's with the same or similar violation as those in the current enforcement action.

Culpability

Yes

25% Enhancement

Subtotal 4 **\$125**

Notes

The Respondent was issued an alert letter on July 19, 2007 concerning total trihalomethane ("TTHM") exceedances.

Good Faith Effort to Comply

0%

Reduction

Subtotal 5 **\$0**

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

Total EB Amounts **\$818**
Approx. Cost of Compliance **\$5,000**

0% Enhancement*
*Capped at the Total EB \$ Amount

Subtotal 6 **\$0**

SUM OF SUBTOTALS 1-7

Final Subtotal **\$675**

OTHER FACTORS AS JUSTICE MAY REQUIRE

0%

Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$675**

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty **\$675**

DEFERRAL

0%

Reduction

Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral due to culpability.

PAYABLE PENALTY

\$675

Screening Date 15-Apr-2008

Docket No. 2008-0626-PWS-E

PCW

Respondent City of Sulphur Springs

Policy Revision 2 (September 2002)

Case ID No. 35731

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN101265866

Media [Statute] Public Water Supply

Enf. Coordinator Christopher Keffer

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 10%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty is enhanced due to two NOVs with the same or similar violation as those in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 15-Apr-2008 **Docket No.** 2008-0626-PWS-E **PCW**
Respondent City of Sulphur Springs *Policy Revision 2 (September 2002)*
Case ID No. 35731 *PCW Revision March 8, 2008*
Reg. Ent. Reference No. RN101265866
Media [Statute] Public Water Supply
Enf. Coordinator Christopher Keffer
Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.113(f)(4) and Tex. Health & Safety Code § 341.0315(c)

Violation Description

Failed to comply with the maximum contaminant level of 0.080 milligrams per liter ("mg/L") for TTHM based on a running annual average. Specifically, the running annual average concentration for TTHM was 0.081 mg/L for the third quarter of 2007 and 0.093 mg/L for the fourth quarter of 2007.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Customers of the water supply have been exposed to significant amounts of pollutants which did not exceed levels protective of human health.

Adjustment \$500

\$500

Violation Events

Number of Violation Events 1

183 **Number of violation days**

mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$500

One annual event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$818

Violation Final Penalty Total \$675

This violation Final Assessed Penalty (adjusted for limits) \$675

Economic Benefit Worksheet

Respondent: City of Sulphur Springs

Case ID No. 35731

Reg. Ent. Reference No. RN101265866

Media: Public Water Supply

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or \$					

Delayed Costs

Equipment			0.0	\$0	\$0	\$0
Buildings			0.0	\$0	\$0	\$0
Other (as needed)			0.0	\$0	\$0	\$0
Engineering/construction	\$5,000	1-Jul-2007	31-Oct-2009	2.3	\$39	\$779
Land			0.0	\$0	n/a	\$0
Record Keeping System			0.0	\$0	n/a	\$0
Training/Sampling			0.0	\$0	n/a	\$0
Remediation/Disposal			0.0	\$0	n/a	\$0
Permit Costs			0.0	\$0	n/a	\$0
Other (as needed)			0.0	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the amount for the water supply to implement an alternative form of disinfection, calculated from the first quarter of noncompliance to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal			0.0	\$0	\$0	\$0
Personnel			0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.0	\$0	\$0	\$0
Supplies/equipment			0.0	\$0	\$0	\$0
Financial Assurance [2]			0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.0	\$0	\$0	\$0
Other (as needed)			0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$818

Compliance History

Customer/Respondent/Owner-Operator:	CN600696983	City of Sulphur Springs	Classification: AVERAGE	Rating: 2.34
Regulated Entity:	RN101265866	CITY OF SULPHUR SPRINGS	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1120002	
	WATER LICENSING	LICENSE	1120002	
Location:	LOCATED AT 825 HILLCREST DR ON SH 19 IN SULPHER SPRINGS, HOPKINS CO			
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	April 14, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 14, 2003 to April 14, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Christopher Keffer	Phone:	(512) 239-5610	

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 07/07/2003 (119073)
 - 2 08/05/2004 (287158)
 - 3 06/15/2005 (395444)
 - 4 03/23/2006 (455403)
 - 5 03/02/2007 (539090)
 - 6 11/08/2007 (639141)
 - 7 02/08/2008 (639957)
 - 8 04/01/2008 (618496)
 - 9 04/02/2008 (641146)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 11/08/2007 (639141)
Self Report? NO
Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the third quarter of 2007.

Date: 02/08/2008 (639957)
Self Report? NO
Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the fourth quarter of 2007.
- F. Environmental audits.
N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF SULPHUR SPRINGS
RN101265866**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0626-PWS-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Sulphur Springs ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a public water supply located at 825 Hillcrest Drive on State Highway 19 in Sulphur Springs, Hopkins County, Texas (the "Facility") that has approximately 9,263 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
3. The City received notice of the violations alleged in Section II ("Allegations") on or about March 23, 2008.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of Six Hundred Seventy-Five Dollars (\$675) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Six Hundred Seventy-Five Dollars (\$675) of the administrative penalty.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have failed to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter for total trihalomethanes ("TTHM") based on a running annual average, in violation of 30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during a record review conducted on March 16, 2008.

III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Sulphur Springs, Docket No. 2008-0626-PWS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the City shall undertake the following technical requirements:
 - a. Within 365 days after the effective date of the Agreed Order, return to compliance with the running annual average MCL for TTHM, in accordance with 30 TEX. ADMIN. CODE § 290.113; and
 - b. Within 385 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Public Drinking Water Section
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed

Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

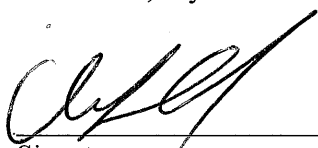
6/24/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

5-7-08
Date

Marc Maxwell

Name (Printed or typed)
Authorized Representative of
City of Sulphur Springs

City Manager

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

